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International Brotherhood of Teamsters, Chauffeurs and Helpers of America, Local Unions No. 222 and No 976 v. Industrial Commission of the State of Utah et al : Petitioners' Reply to Brief of Respondents

Utah Supreme Court

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OCT 4 1959

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**IN THE SUPREME COURT
of the
STATE OF UTAH**

INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS and
HELPERS OF AMERICA, LOCAL
UNIONS NO. 222 AND NO. 976,
for and on behalf of their membership,

Petitioners,

vs.

THE INDUSTRIAL COMMISSION OF
THE STATE OF UTAH, ITS BOARD
OF REVIEW, AND THE APPEALS
REFEREE AND CLAIMS SUPERVIS-
OR OF THE STATE DEPARTMENT
OF EMPLOYMENT SECURITY,

Respondents.

FILED

OCT 9 - 1959

Clerk, Supreme Court, Utah

Case No.
9063

PETITIONERS' REPLY TO RESPONDENTS' BRIEF

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A. PARK SMOOT**
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PRELIMINARY OBSERVATIONS

A careful study of Respondents' Brief shows considerable duplication of factual statements already made in Appellants' Brief, but there also appear some differences, most of which are rather subtle and productive of confusion and misunder-

standing of the facts. Since these differences are statements which are in conflict with Appellants' statement of facts, we shall not discuss them in this Reply, but respectfully request the Court to take due note of the way in which Respondents use the record.

It appears from Respondents' Brief that their basic theory of the case is that the negotiators for the terminal employes who went on strike in Joint Council 38 in the Sacramento Valley were the same negotiators for every other terminal employe in every other negotiating unit in the eleven western states, and are also the same negotiators who negotiated the short and long line employes agreement; in other words, that there was really only one negotiating unit for all employes in the eleven western states.

Every page of the record reveals the error of their theory and the futility of their arguments. Respondents frankly concede that authority to so negotiate was never expressly given any one negotiating unit by the local unions. Then, in spite of this formidable obstacle, respondents proceed to create "an eleven western states bargaining pattern for both the long line and the terminal workers" and to set up an eleven western states bargaining unit growing out of such pattern which at one time is the Woxberg Committee, at another time, the Filipoff Committee while it existed, and at other times, another committee or group which is not identified.

This union "committee" or these committees, according to respondents, usurped *control* of the negotiating, in some inexplicable manner and without any evidence in the record, and thereby created one large eleven western states negotiating

unit. Every bit of evidence which they use to support their theory completely ignores the reasonable interpretation of such evidence in favor of a strained and artificial application in support of their preconceptions. We submit that this case does not involve a complicated or very difficult legal problem, once it is clearly determined what the facts are as portrayed in the record. The serious problem of this case is that justice will have little chance if the facts are not understood, and we believe that the facts are not readily apparent without a careful examination of the record because of the confusion that respondents, during the various stages of this case, have inserted by their comments, into a lengthy record. At this stage of the case, we believe that confusion has been inserted into the case by many of the "fact" assertions in their brief and the suggestions of legal significance concerning the same by counsel in Point I of their Argument. We therefore proceed to consider these in the same order as therein presented.

REPLY TO RESPONDENTS' POINT ONE

Without making any effort to explain away the essential and bona fide—and sometimes grim—negotiating and voting that went on in Joint Council 38 and Joint Council 67 for their respective terminal employees, respondents simply ignore these bona fide units, and then glibly speak of "an eleven western states bargaining pattern for both the long line and the terminal workers." They then, beginning on page 25, give a series of "concrete" situations which are supposed to support this "pattern." We first observe, however, that estab-

lishing a "pattern" of bargaining has no legal significance in and of itself. The fact is that several separate bargaining units could follow a "pattern" and still retain their autonomy. Impelling factors could bring them together in a co-operative effort for their own common good when faced with a common problem. In this case the impelling factor was the threat of, and later the fact of, general unemployment in all the units, which came about by the refusal of Joint Council 38 to refrain from striking and the insistence of the *employers* to shut down everywhere else.

The first "concrete" situation was the act by the *employers'* line committee of asking the various terminal units—the *employers'* side—if they would extend the old contract and then of informing the *union* line committee that the *employers'* various pick-up-and-delivery negotiating units were agreeable to an extension of the 1955-58 contract. We here observe that whatever authority which the *employer* line committee may have had to negotiate with terminal employees is a consideration quite different from the question as to whether the *union* line committee had such authority to negotiate for terminal employees. It is only the latter question that has a bearing on this case. We are only concerned with the problem of who were the authorized and bona fide negotiators for the Utah applicants. Who the employers designated from time to time to negotiate for the employers is something over which the Utah employee applicants had no control, and therefore is a problem with which this case is not concerned. Therefore, respondents' concrete situation here is so without merit that it needs no further comment, except that the evidence itself is so revealing of the questionable way in which respondents use the record

that we wish to quote the testimony of Mr. Woxberg which gives rise to respondents' first "concrete" situation. We quote:

"In the meeting in Phoenix between the two negotiating committees, the question was raised as to whether or not they had the authority to extend the local pick-up-and-delivery agreements in all areas, *which they said they did not have*, but that they would go back to their associations over that weekend and recommend to their respective associations that they, the local associations, extend the pick-up-and-delivery agreement, although they did have the authority to extend the line agreement.

"So there was a lull from over the weekend of around May the 1st. We reconvened in San Francisco, I am quite sure, on May 6th, which was a Monday or Tuesday, and at that time we were advised that these associations in all areas had approved the extension of the agreement too; so the possibility of an immediate strike or working without an agreement was lifted." (R. 0219-20.)

The above is an illustration of a basis on which respondents say the employers "negotiated" *for* the terminal employees in the eleven western states! Of course, getting the information in question and conveying it to the union line committee can hardly be thought of as negotiating. It should be obvious also that employers negotiate *with* employees, not *for* them. Their concrete situation would indicate that respondents have failed to note the distinction.

Their next "concrete" situation is that the "May 27 Wage Settlement contained provisions dealing with both the long line and local drayage workers." Then they add that this "Wage Settlement" was "submitted to the locals in the eleven western

states for their approval or disapproval." They say this, however, without taking the trouble to point out that the Woxberg Committee presented to the line drivers for voting only that portion of the wage settlement which pertained to line drivers; that the Woxberg Committee submitted nothing whatsoever to the terminal employees in any of the terminal units; and that, in fact, the "May 27 Wage Settlement" was never submitted to the Joint Council 67 terminal employees, a fact which respondents elsewhere admit.

As to why this "Settlement" contained both line proposals and pick-up-and-delivery proposals is explained by Woxberg:

Q. Now, in view of the apparent confusion that this Exhibit 13 has thrown into the record, I will ask you: Is there any good reason why this was not set up in two sheets of paper; one for the line and one for the local pick-up-and-delivery?

A. Well, when this unofficial committee met over there we were attempting to settle a serious situation. The employers said to our unions: "We will recommend this unofficial committee—we will recommend to these areas that we try to apply this pattern which was put down in writing." Now, it could very easily be that we didn't—did put down on one sheet of paper everything covering line, and on another sheet of paper put down everything governing local, *but we did not do that for the purpose of expediting this thing and getting it out.* (R. 0227-8.)

Their next effort is a recital of some of the negotiating which took place between the Intermountain Operators League and Joint Council 67, apparently quite oblivious to the implicit admissions therein of the weakness of their case, for regardless of the stress and significance which they attempt to place

on the San Francisco meetings, obviously it was still necessary and essential for the Intermountain Operators League and Joint Council 67 to negotiate and conclude a contract for the terminal employes in Joint Council 67.

But what respondents say as to an overall, authoritative negotiating unit for the eleven western states working in San Francisco is not supported by the record. The only negotiating in San Francisco on an eleven western states basis was the line drivers negotiations.

Now, true it is, that the representatives of the Intermountain Operators League and Joint Council 67 met in San Francisco, but they met separate and apart from all other negotiating units. Woxberg's testimony on this matter is:

During this time, still attempting to get the employers to agree to negotiations, eleven western states pick-up-and-delivery agreement, and while—and subcommittees were attempting to iron out this line supplement agreement, we prevailed upon the employers to call in the respective association representatives who are authorized to negotiate a pick-up-and-delivery agreement into San Francisco, and see if they couldn't then negotiate a pick-up-and-delivery contract for all of these areas in the eleven western states under the umbrella of these master negotiations that were going on in San Francisco, so that we could keep from having a dispute or work stoppage later on. Our unions, and the records here in the hotel will show that the employers would not agree to that joint negotiation, but would consider sitting down in separate rooms with representatives from each area and explore the possibility of arriving at a local pick-up-and-delivery agreement. For example, I personally arranged with the Hotel Sir Francis Drake for approximately ten separate rooms. I assigned a room

to the Utah-Idaho employers and unions, so that they could sit down in that room and discuss their pick-up-and delivery problem—assigned to each and every one of the rest of the areas—Southern California, the Valley, Portland, State of Oregon, State of Washington, State of Colorado, Albuquerque, New Mexico, Phoenix, Arizona—and Arizona, and they then met for a day under that type of negotiation.

Q. In their respective —

A. Bargaining units. The old bargaining units met in these respective rooms. That all blew up about the second day, because the employers sensed that we were attempting to get them all together, and it blew all up. (R. 0221-2.)

One of the results of the Utah-Idaho negotiating is Item No. 6 in the "May 27 Wage Settlement."

But the simple fact is that regardless of the proposals from San Francisco, and regardless of who was responsible for this item or that item, or all the items, for that matter, or whether the proposals were segregated as they should have been and placed on different sheets of paper or whether they weren't, it was still only a proposal growing out of a desperate situation—desperate to the unions because they were willing to do anything within their power to *avoid* a work stoppage—a proposal which remained a proposal only for the authorized and bona fide respective bargaining units individually to do with as they saw fit. Respondents, in effect, admit this.

In view of the above, there is nothing in the letter of Mr. Callister's (referred to on page 27 of respondents' brief) that enhances respondents' case. On the contrary, this letter emphasizes:

1. That the negotiations were being strictly conducted by the traditional bargaining unit covering Utah and Idaho.

2. That whatever suggestions came from their own separate preliminary talks in San Francisco, or whatever suggestions came from anyone else, or whatever stamp of approval or even urgent recommendations made by others, it was now time for the appropriate and authorized negotiating unit covering Utah to get down to business and do what only they, and no one else, could do: negotiate a contract for the terminal employees in Utah and Idaho.

Near the top of page 28 of their brief, after quoting a part of the Intermountain Operators League's June 13 proposal, respondents say, "We find no evidence that there were negotiations at the local level dealing with the master agreement for pick-up-and-delivery workers."

The best evidence that there were negotiations at the local level as to the local master agreement is the product of those negotiations, the contract itself. This contract is found in the record at R. 0182-A, and is signed by the Intermountain Operators League and the various locals in Joint Council 67. In the main it is a copy of the *line* master agreement except where the local situation requires a departure therefrom. Section 7 of Article 3 beginning at page 9 of the contract and covering a little more than two pages is illustrative of matters not in the line master agreement. It should be remembered that the various bargaining units in the eleven western states, although separate and autonomous, were hopeful that they could achieve uniformity in the various master agreements. It was an objective of both the employers and the employees. But the Woxberg

line drivers committee couldn't impose their agreement on the terminal units. It could only hope that all of the units liked it sufficiently to adopt it, for it was still a matter for the individual units to negotiate. (R. 0249-50.) This fact is further confirmed in the Utah-Idaho area by Mr. Latter's testimony:

"While the wage issues are settled for the local pick-up-and-terminal and office employees, there is yet much negotiating to be done in respect to the master contract to cover them, and how soon that can be done, that could possibly run into several weeks of negotiations yet." (R. 0140.)

Later, on the same page, Mr. Latter adds:

"The employers are now awaiting my assembling the contract for their consideration, at which time we will have a meeting and there has not been any meeting of minds whatsoever on the master contract as it pertains to the local pick-up-and-delivery and the terminal employees."

Still later, on the same page, Mr. Dremann asks:

"If the employers took the position that they couldn't sign the long line until the other one was negotiated, if that is their position in this picture, then, of course, it would have a very pertinent bearing on this whole issue, would it not?"

To which Mr. Latter responds:

"I don't see why it would, because the fact of the matter is that the negotiations are a separate bargaining unit, entirely in separate bargaining units and an entirely separate group of people, different class and grade."

The part of the June 13 proposal which respondents quote at the top of page 28 of their brief is not, it will be noted,

a provision of the Utah-Idaho master agreement. This particular proposal by Mr. Callister appears to have been made because of a misunderstanding which he had of the meaning thereof. This particular clause appears in the May 27 wage settlement proposal at Item 12, the meaning of which is explained by Mr. Woxberg as follows:

Q. What does 12 refer to?

A. "12. The new master agreement when adopted, shall govern all supplemental and local agreements, and in any conflict between the new master and supplemental agreements (and masters which apply thereto), the provisions of the new master shall govern."

Now, that refers to the line master and pertains only to the line master. As it reads, "shall govern all supplemental and local agreements," as referred to in this item 12, does not mean local pick-up-and-delivery, or office workers, or garage employes; that word "local agreement" refers to such as oil field line drivers, which is local in nature, cattle agreement, which is local in nature, but it is a line driver involved, that type of a line agreement.

Q. It can be said that there is nothing in 12 that refers to any pick-up-and-delivery agreement?

A. No, it does not. The whole negotiation and the theory behind the negotiations, was that we would negotiate a long line master agreement, for the eleven western states. Then it was the intent of the parties to go back to their respective bargaining units.

Q. Pick-up-and-delivery?

A. Which is covering pick-up-and-delivery, and negotiate a master covering pick-up-and-delivery.

Q. Within their own respective areas?

A. Within their own respective areas, and the reason for that is this: You have peculiar situations in pick-up-and-delivery that does not particularly pertain to line. (R. 0226-7.) (See also R. 0233-4 concerning this clause.)

At R. 0142 Mr. Callister appears to recognize that he had misunderstood the meaning of Item 12 in the May 27 wage settlement proposal and elsewhere concedes that since he was not present in some of the negotiations that Mr. Latter would know more about the matter than would he. Be that as it may, we offer Mr. Woxberg's testimony as being accurate because he was a direct witness to all of the negotiations and provisions that went into said proposal.

And yet, with all of the above evidence, respondents say that they can find no evidence that there were negotiations at the local level in Utah and Idaho concerning a Master Agreement for terminal workers!

Then respondents argue that because the Utah-Idaho unit during their negotiations adopted a proposal out of the many proposals in the May 27 Wage Settlement, it, the Utah-Idaho unit, was thereby superseded as a negotiating unit by those who made the proposal. This argument is so obviously without merit that we submit it.

Beginning near the bottom of page 28 and continuing through page 29 of respondents' brief reference is made to the Seattle meetings with certain comments which, we believe, are, to some extent, erroneous and misleading. We urge that the record reference (R. 0243) be read, and that it be read along with the balance of the record concerning the Seattle meeting which is found at R. 0238-40.

At the top of page 30, respondents say that the employers, after the Seattle meeting, anticipated "pressures by the different locals which would change the pattern of the May 27 Wage Settlement proposal." To this we say that there was only one area where there was serious pressure, namely Joint Council 38, and that pressure was not directed toward any unit of employers outside of the California Trucking Association in the Sacramento Valley. Furthermore, the pressures in the various terminal units, whatever they were, were essentially the same before Seattle as afterward, and whatever the pressure was in any particular unit, it was a problem for that unit only. (For the autonomous nature of the negotiating authority of the local unions, we again refer to R. 0234-6.)

Then respondents offer this amazing argument: That the employers refused to sign a line agreement based on the May 27 offer and acceptance until *after* all the various issues in the terminal units were settled, *because* the employers were afraid that the line people might want some "sweetening" if the terminal employees got more than the line drivers. Of course, the reverse would be true. The employers would not miss an opportunity to tie the line drivers down to the May 27 proposal now that they had the opportunity, if they were worried about the subsequent possibility of a "sweetener" for the line drivers in case they gave the terminals relatively more. Signing the agreement would protect them; not signing it would leave them vulnerable. Several weeks prior to the strike in Joint Council 38, Woxberg pleaded with the employers to sign the contract. This evidence should be studied carefully. See R. 0232-3, R. 0066-74. Joint Council 42, prior to said strike, tried to get the employers to sign a contract, also based on a completed

offer and acceptance, but the employers refused (R. 0252-3). Arizona had the same experience (R. 0253). And yet, in spite of this uncontroverted evidence, respondents would try to lead this court to believe that the Woxberg Committee wouldn't sign an agreement (in keeping with the line drivers' vote of acceptance of the May 27 proposal) until all the "local pick-up-and-delivery issues were settled!

The fact that the employers refused to sign an agreement in every unit that was willing to accept or adopt the May 27 proposal is conclusive proof that they were not worried about any "sweetening" problem, as respondents so amazingly argue; and it is also conclusive proof that the employers had long since agreed and conspired among themselves in all the various negotiating units to enforce a lock-out upon the unions in all the units *as a weapon against Joint Council 38* in case Joint Council 38 went on a strike.

Then beginning with the last paragraph on page 31, the respondents begin a discussion of the Washington, D.C. meetings and refer to an unofficial "committee" of union representatives, of their "joint negotiations," and of "the memorandum" which resulted therefrom. The evidence for this statement is the hearsay comment during the cross examination by Mr. Dre-mann of Woxberg on a matter beyond the scope of the direct examination, as follows:

" * * * some one proposed a meeting in Washington, D.C. of all interested parties, with the result that a committee of the union representatives, unofficial, committee of employers, went to Washington. I refused to attend that meeting. I did not go, and so advised those people who went to Washington, both employers

and union representatives as well, that we had concluded a line agreement with our employers. There was no need for me to go to Washington. Any problems that we had governing line drivers in the West can be settled in the West, with the results that the meeting in Washington was confined to working out pick-up-and-delivery and local solutions to the problems.

For example, much time spent on the particular pick-up-and-delivery problems of Denver. A formula was worked out for the Denver group; much time was spent for the problems in Utah; a formula was worked out which was different than the Denver one; much time was spent on the Valley settlement, which was a formula that exceeded any other formula that was granted to any other area. In other words, they came out with a large slice of the pie. They concluded all those local pick-up-and-delivery problems, and established a formula. That meeting adjourned in Washington after many people had applied their names to a bottom of these understandings, and were reconvened here in San Francisco. (R. 0245-6.)

Mr. Woxberg's testimony appears to be the only reference in the record to the meetings in Washington, D.C. Respondents, by their comments, cast these meetings in a setting not warranted by the meager and inexplicit information given by a non-participant, and which, in fact, is quite different from what actually happened. If this hearsay comment of Woxberg's, appearing as it does in a transcript which was never properly published under circumstances where appellants could register objection thereto, is thought to be worthy of consideration, then we feel that justice requires a further departure from standard procedure to permit the consideration by this court of an affidavit of Mr. Fullmer Latter, who was present at the Washington,

D.C. meetings. *This affidavit is verified by Mr. Roscoe Brooks, the negotiator for the Intermountain Operators League.*

AFFIDAVIT

COUNTY OF SALT LAKE ss
STATE OF UTAH

FULLMER H. LATTER, being first duly sworn upon his oath, deposes and says:

1. That during the month of September, 1958, affiant initiated a move to get the employer and union representatives of the various terminal employe negotiating units in the eleven western states to meet in Washington, D.C. This effort was for the purpose of further exploring possible solutions to the problems which gave rise to the strike in Joint Council 38 and to the general shutdown of the truck freight industry by the employers elsewhere in the eleven western states. This move was successful and such a meeting was convened on September 2, 1958 in the International Teamsters headquarters at Washington, D.C.

2. Representatives of all of said negotiating units met together and it was agreed by those various unit representatives that they were all willing to make another effort at that time to resolve their differences by further negotiations. This agreement was arrived at, however, only after it was expressly understood and arranged that the various negotiating units would meet separately and negotiate their own contracts. Each negotiating unit, therefore, proceeded to go to separate rooms to negotiate their respective agreements.

3. Affiant, representing Joint Council 67, met with Messrs. Roscoe Brooks and Neil Broady of the Intermountain Operators League. Mr. Buddy Graham attended the meeting as a witness. At the meeting, which

continued for several days with adjournments, said negotiating parties reached an agreement on all issues and reduced the same to writing which was signed by the aforesaid participating parties and no one else. These negotiations pertained only to the terminal employes in the aforesaid unit which in general covers the Utah-Idaho area. The subject matter which was negotiated pertained to wage rates, hours, and matters related thereto as they appear in the agreement known as Supplemental Agreement found at R. 0182-A.

4. During these negotiations, the other units were also negotiating in their respective groups and by September 5, each group had arrived at its own solutions, and each unit signed its own agreement separate from the others. To affiant's knowledge there was no single agreement or document signed by all the units.

5. The dominating and compelling factor which brought the various units to one place at the same time was the refusal of the employers to consider a lifting of the lockout in any area until settlements were reached in all areas. Affiant proposed the meeting at Washington, D.C. because he felt that there might possibly be some conciliation assistance from the offices of the International, especially was such assistance needed in Joint Council 38. This idea was shared by others among both the employer and union representatives. Such assistance was given from time to time in the various units, and it was at Washington, D.C. that Joint Council 38 and the C.T.A. in the Sacramento Valley area finally reached an agreement. From affiant's observation, it was this area that had, prior thereto, presented the only serious obstacle to the employer's requirement that *all* units must reach agreements before the lockout would be lifted.

Further affiant sayeth not.

FULLMER H. LATTER

Subscribed and sworn before me this 28th day of
September, 1959.

DEAN F. CORBETT
Notary Public, Residing at
Salt Lake City, Utah

My Commission Expires:
January 16, 1962

COUNTY OF SALT LAKE
STATE OF UTAH

ss

ROSCOE BROOKS, being first duly sworn, deposes
and says that he is the same Roscoe Brooks referred to
in the foregoing Affidavit of Fullmer H. Latter, that
he has read said Affidavit and knows the contents
thereof, and that the same is true of his own knowledge,
except as to those matters therein stated on information
and belief, and as to such matters, he believes it to be
true.

ROSCOE BROOKS

Subscribed and sworn before me this 28th day of
September, 1959.

DEAN F. CORBETT
Notary Public, Residing at
Salt Lake City, Utah

My Commission Expires:
January 16, 1962

The crucial period in this case which determines what is
or isn't a bargaining unit is the period *prior* to the time, on
May 27, when negotiations broke down and there was a "secret"
meeting to see what possible *new* solutions might be available.
And if it be contended that the crucial period of inquiry should
be extended to August 11, the date of the strike and lockout;

certainly that should be the full limit of significant inquiry, because what happened after these dates could well have been a completely different realignment or unification of units for the specific purpose of meeting the emergency, provided, of course that the various units were willing to so co-operate.

But forced as we now are by respondents to consider events after August 11, we see that the old, established negotiating units still remained intact all through the desperate days following May 27 and again August 11, and right up to the time that the several, respective agreements were concluded. These facts ought to be conclusive in establishing the merits of the petitioners' case.

CONCLUSION

When the employers, acting in concert over the entire eleven western states, decided that they would use a general shutdown and lockout for the purpose of forcing the local area of Joint Council 38 to terms, they knew that they had a big public relations problem on their hands. But they effectively met this problem by using a catchy slogan, which may have appealed to the public who were probably vulnerable to such advertising because of the adverse public sentiment against the teamsters for the past two or three years. The slogan that they used, "a strike against one is a strike against all," while being effective propaganda, certainly ought not to be accepted by a quasi judicial body, even though consisting of lay members, without a careful and critical analysis of its merits when applied to the facts.

It appears to us that the Board has been a victim of a very effective, but, nevertheless meaningless slogan. Whether counsel for petitioners could have helped the Board avoid this error by appearing before them and presenting their case we do not know. But it is an unfortunate fact that they made two formal requests for such a hearing and upon both occasions were either ignored or denied in spite of the fact that counsel for respondents was present on the occasions when the Board met to consider this case. If the Board's policy is against such oral hearings it is a policy open to serious criticism, especially in a case of this importance and complexity. The condition of the record undoubtedly is due somewhat to the absence of counsel for petitioners from the hearing before the Appeals Referee. But, we believe, that this fact added to the need for a fair oral hearing before the Board.

Respectfully submitted,

CLARENCE M. BECK

A. PARK SMOOT

Attorneys for Petitioner